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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-549-821

Polyethylene Retail Carrier Bags from Thailand: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review; 2009-2010

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On November 13, 2013, the United States Court of International Trade (Court or CIT) issued its final judgment affirming the Department of Commerce's (the Department's) final results of the remand redetermination<sup>1</sup> concerning the 2009-2010 administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand.<sup>2</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final results of administrative review and is amending its final results of the administrative review of the antidumping duty order on PRCBs from Thailand covering the period of review (POR) of August 1, 2009 through July 31, 2010, with respect to the weighted-average dumping margins calculated for Thai Plastic Bags Industries Company (TPBI) and Landblue (Thailand) Co., Ltd. (Landblue).

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<sup>1</sup> See *Results of Redetermination Pursuant to Court Remand Thai Plastic Bags Industries Co., Ltd., v. United States, Polyethylene Retail Carrier Bag Committee, Hilex Poly Co., LLC, and Superbag Corporation*, Consol. Court No. 11-00408, dated July 10, 2013 (*Remand Results*).

<sup>2</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, Consol. Court No. 11-00408, Slip Op. 13-139 (CIT November 13, 2013) (*TPBI v. United States*).

EFFECTIVE DATE: November 25, 2013

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3683.

SUPPLEMENTARY INFORMATION:

The Department published the final results of the 2009-2010 administrative review of the antidumping duty order on PRCBs from Thailand on November 3, 2011.<sup>3</sup> Both Thai Plastic Bags Industries Co., Ltd. and Polyethylene Retail Carrier Bag Committee (and its individual members, Hilex Poly Co., LLC and Superbag Corp. (collectively, the petitioner)) timely filed complaints with the CIT to challenge various aspects of the *Final Results*. On March 19, 2013, the Court remanded for the Department to reconsider its positions with regard to its calculation of the general and administrative expenses for TPBI and its adjustment of the surrogate selling expenses used to construct selling expenses for Landblue.<sup>4</sup> On July 10, 2013, the Department filed the *Remand Results* with the CIT, in which the Department revised its calculations of TPBI's general and administrative expenses and its adjustment of the surrogate selling expenses used to construct selling expenses for Landblue. Accordingly, the Department recalculated TPBI's weighted-average dumping margin from 35.71 percent to 35.79 percent and recalculated Landblue's weighted-average margin from 25.73 percent to 25.60 percent. On November 13, 2013, the Court affirmed the Department's *Remand Results*.<sup>5</sup>

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<sup>3</sup> See *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 59999 (September 28, 2011) (*Final Results*), as amended, 76 FR 68137 (November 3, 2011) (*Amended Final Results*).

<sup>4</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, Consol. Court No. 11-00408, Slip Op. 13-34 (CIT March 19, 2013).

<sup>5</sup> See *TPBI v. United States*, Slip Op. 13-139 at 25.

### Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (Act), the Department must publish a notice of a court decision not “in harmony” with a Department determination, and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s November 13, 2013, judgment constitutes a final decision of the CIT that is not in harmony with the Department’s *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

### Amended Final Results

Because there is now a final court decision with respect to this case, the Department is amending its *Final Results* with respect to TPBI’s and Landblue’s weighted-average dumping margins for this POR. The revised weighted-average dumping margins are as follows:

| <u>Manufacturer/exporter</u>         | <u>Weighted-average margin (percent)</u> |
|--------------------------------------|--|
| Thai Plastic Bags Industries Company | 35.79                                    |
| Landblue (Thailand) Co., Ltd.        | 25.60                                    |

In the event that the CIT's ruling is not appealed, or if appealed, upheld by the Federal Circuit, the Department will instruct United State Customs and Border Protection (CBP) to liquidate entries of subject merchandise by TPBI and Landblue in accordance with 19 CFR

351.212(b)(1).<sup>6</sup> Since the *Final Results*, the Department has not established a new cash deposit rate for Landblue. Therefore, consistent with section 751(a)(1) of the Act, the Department will instruct CBP to collect cash deposits for entries of subject merchandise by Landblue at the amended rate.<sup>7</sup> Because the order on PRCBs from Thailand was revoked in part with respect to TPBI effective July 28, 2010,<sup>8</sup> we will not instruct CBP to collect cash deposits for entries of subject merchandise by TPBI.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

November 25, 2013.  
Date

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<sup>6</sup> See *Final Results*, 76 FR at 60001 and *Amended Final Results*.

<sup>7</sup> See *Final Results*, 74 FR at 68138.

<sup>8</sup> See *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 FR 48940 (August 12, 2010).